THE HONOURABLE SRI JUSTICE V. ESWARAIAH

Writ Petition Nos.23792, 23784 23787, 23788, 23811, 23812, 23816, 23840, 23841 and 23850 of 2005

Date: 07-11-2005

WP.No.23792 of 2005

Between

Chendipudi Siva Rama Krishna Reddy, S/o. Venkat Reddy,
Occ: Agriculture, R/o. Kanteru, Talikonda Mandal, Guntur District.

...PETITIONER

AND

The Government of Andhra Pradesh rep. by its Secretary, Agriculture and Cooperation [Coop.V(1)] Department, Secretariat Buildings, Hyderabad and others.

...RESPONDENTS

WP.No.23784 of 2005

Between

B. Krishna Reddy, S/o. Krishna Reddy, Occ: Agriculture/Member of Thippaluru PACS R/o. Valasapalli Village, Yerraguntla Mandal, Kadapa District and others.

...PETITIONERS

AND

The Government of Andhra Pradesh rep. by its Secretary, Agriculture and Cooperation [Coop.V(1)] Department, Secretariat Buildings, Hyderabad and others.

...RESPONDENTS

WP.No.23787 of 2005

Between

M. Subba Rao S/o. Papa Rao, R/o. Chandaluru, J. Panguluru Mandal, Prakasam District.

…PETITIONER

AND

The Government of Andhra Pradesh rep. by its Principal Secretary, (Cooperation), Secretariat, Hyderabad and others.

…RESPONDENTS

WP.No.23788 of 2005

Between

Koya Khaja Rao S/o. Sesaiah, R/o. T. Kopperapadu, J. Panguluru Mandal, Prakasam District.

…PETITIONER

AND

The Government of Andhra Pradesh rep. by its Principal Secretary, (Cooperation), Secretariat, Hyderabad and others.

…RESPONDENTS

WP.No.23811 of 2005

Between

Malukurthi Venkata Rao, S/o. Satyam, R/o. Darsiparru, Pentapadu Mandal, West Godavari District.

…PETITIONER

AND

The District Collector, West Godavari District, Eluru and others.

…RESPONDENTS

WP.No.23812 of 2005

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Between

V. Krishna Murthy, S/o. Satyanarayana, Occ: Agriculture,
R/o. Peravaram Village, Athreyapuram Mandal, East Godavari District.

…PETITIONER

AND

The District Collector, East Godavari District, Kakinada and others.

…RESPONDENTS

WP.No.23816 of 2005

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Between

Sri. Vatsavai Satyanarayana Raju, S/o. Bangar Raju, Occ: Agriculture, R/o. Jagampeta Village and Mandal, East Godavari District.

…PETITIONER

AND

The District Collector, East Godavari District, Kakinada and others.

…RESPONDENTS

WP.No.23840 of 2005

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Between

Bollineni Anjaneyulu, S/o. Sri Ram Murthy, R/o. Kollivarigudem,
T. Narsapuram Mandal, West Godavari District and another.

…PETITIONERS

AND

The Government of Andhra Pradesh rep. by its Principal Secretary, Agriculture and Cooperation Department, Andhra Pradesh State Secretariat, Hyderabad and others.

…RESPONDENTS

WP.No.23841 of 2005

Between

Vemula Satyanarayana, S/o. Sri Suraiah, R/o. Yadavalli, Limgampalem Mandal, West Godavari District.

…PETITIONER

AND

The Government of Andhra Pradesh rep. by its Principal Secretary, Agriculture and Cooperation Department, Andhra Pradesh State Secretariat, Hyderabad and others.

…RESPONDENTS

WP.No.23850 of 2005

Between

Pothina Varam S/o. Late Appala Swami, R/o. Chandrampalem (v), Madhurawada,Visakhapatnam (Rural Mandal), Visakhapatnam District and others.

…PETITIONERS

AND

The Government of Andhra Pradesh rep. by its Principal Secretary (Cooperation), Secretariat, Hyderabad and others.

...RESPONDENTS

COMMON ORDER:

All these writ petitions have been filed by different Members of various Primary Agricultural Cooperative Societies (PACS) seeking a Writ of Mandamus to set aside the order of the Government dated 03.11.2005 issued in G.O.Rt.No.1166 Agriculture and Cooperation (Coop. V (1)) Department canceling the earlier order postponing the elections to the respective PACS and directing the Commissioner for Cooperation and Registrar of Cooperative Societies to take necessary action in the matter as illegal, arbitrary, against the principles of natural justice, violative of Articles 14 and 21 of the Constitution of India and also to direct the respondents to follow the procedure prescribed under Sections 31 and 32 of the Andhra Pradesh Cooperative Societies Act (for short 'the Act'), 1964 and Rules 18 and 22 of the Andhra Pradesh Cooperative Societies Rules (for short 'the Rules'), 1964.

Heard the elaborate arguments of Sri T. Lakshmi Narayana, Smt. Kavitha Gottipati, Sri N.V. Anantha Krishna, Sri Kowturu Vinaya Kumar, Sri M.V. Durga Prasad and Sri S.V. Bhatt, learned counsel for the respective petitioners.

It is submitted that the Government considered the representations filed by the petitioners and passed orders in various G.Os. postponing the elections to the concerned PACS in view of the hyper sensitive situation and the ongoing activities of the rival groups who are involved in the intimidation of voters, which can cause possible obstruction to the conduct of free and fair poll and having examined the issue in true spirit and having convinced about the ground realties obtaining at the given point of time in exercise of powers vested in the Government under Rule 22-C(1)(iii) of the Rules postponed the elections to the Managing Committees of the respective PACS until further orders. On receiving representations from the rival groups and other persons to conduct elections to the postponed PACS the Government unilaterally decided to cancel the earlier orders and directed to conduct elections. It is submitted that the said action of the Government is illegal, arbitrary and against the principles natural justice.

It is further submitted that when the Government considered their representation and postponed the elections until further orders the petitioners have a right to be heard before passing any orders canceling the earlier orders postponing the elections to the PACS.
It is stated that the atmosphere is still not conducive to conduct elections and there are several irregularities and illegalities in the preparation of the voter's list and also there is no sufficient notice given for the elections to be held on 08.11.2005 and 09.11.2005 pursuant to the orders of the Government in G.O.Rt.No.1166 dated 03.11.2005.

Sri M.V. Durga Prasad, learned counsel for the petitioners in WP.Nos.23840 and 23841 of 2005, relied on a Division Bench judgment of this Court in the case of **M. SIVA RAMAKRISHNAIAH v. STATE OF AP** which arouse under the Urban Land (Ceiling and Regulation) Act (for short 'the ULC Act'), 1976. In the said case applications by house building co-operative societies for exemption were rejected by a common order without examining each application on merits. This Court held that Section 20 of the ULC Act confers a power coupled with duty on the part of the State Government and it has to be exercised by the State Government in respect of each case applying its mind as to the purpose for which the land is proposed to be used. The Government in such cases have to examine whether the house building co-operative societies and the land holders have complied with the conditions laid down by the Government of India and dispose of the application for exemption after proper enquiry in accordance with the directions of the Union Government. The general order passed rejecting all the applications is contrary to the provisions of the Section 20 of the ULC Act. I am of the opinion that the said judgment of this Court has no application to the facts of the cases on hand and also none of the petitioners have accrued any vested right.

In all these writ petitions the election process has been scheduled and the Election Authority appointed the Election Officers to the concerned PACS in accordance with Rule 22 of the Rules after following the prescribed procedure and the elections were scheduled to be held on 22.10.2005 and 26.10.2005 to the concerned PACS respectively. The elections scheduled to be held on the respective dates were postponed by the order of the Government. Various writ petitions were filed questioning the orders of the Government postponing the elections in W.P.No.22820 of 2005 and batch. Meanwhile, the Government passed orders in G.O.Rt.No.1166 dated 03.11.2005 canceling the earlier order postponing the elections. Hence, the writ petitions were closed on 03.11.2005 pursuant to the said

orders of the Government.

The only question that arises for consideration is whether the impugned G.O.Rt.No.1166 dated 03.11.2005 is illegal and arbitrary.

The earlier batch of writ petitions in W.P.No.22820 of 2005 were filed questioning the order postponing the elections. No doubt, the Government is entitled to postpone the elections if there is break down of law and order affecting the peaceful and lawful conduct of elections, if any natural calamity prevents the conduct of elections particularly, voters from participation in the election and if there is reasonable apprehension that voters will not be allowed to vote frankly and freely. Admittedly, there was no break down of law and order or any natural calamity but the Government postponed the elections exercising the power under Rule 22-C(1)(iii) of the Rules.

The Government exercising its powers under Rule 22-C(1) of the Rules can postpone the elections but not on any application or representation filed by the petitioners. There is no right of appeal.

No doubt, the Minister for Cooperation considered the representations of the petitioners but some of the representations go to show that there was no specific averment with regard to any reasonable apprehension that the voters shall not be allowed to vote frankly and freely. The representations have been filed on the ground that the voter's list were not properly prepared and rule of reservation is not maintained properly and there are certain irregularities. The perusal of the earlier order goes to show that the Government without any justification whatsoever considered the representations of certain members and postponed the elections to 101 PACS. When the earlier batch of writ petitions were filed questioning the postponement of elections it appears that the Government realized its mistake and passed the impugned order in G.O.Rt.No.1166 dated 03.11.2005 canceling the earlier orders postponing the elections. Therefore, the earlier batch of writ petitions was closed.

Merely because the Government has taken into consideration some of the representations of the petitioners it cannot be said that the petitioners are entitled to be heard before passing the impugned order canceling the earlier order passed under Rule 22-C(1) or Rule 22-C(1)

(iii) of the Rules. There is no provision under the said Rules to give a reasonable opportunity to the person who made a representation to postpone the elections. Therefore, I am not inclined to accept the argument of the learned counsel for the petitioners that they have a right to be heard before passing the impugned order.

A perusal of Rule 22-C(1)(b) of the Rules goes to show that whenever there is postponement of election process and if the Government thinks that the conditions became conducive for recommencing election, it is open for the Government to issue order for the recommencement of the elections. Therefore, in the instant cases the Government passed its order in exercise of power under Rule 22-C(1)(b) of the Rules canceling the earlier orders postponing the elections for recommencement of the elections. The election process, which has been rescheduled to conduct elections on 08.11.2005 and 09.11.2005, cannot be obstructed or interrupted, as I do not see any merits in the writ petitions. If any incident takes place preventing the voters to vote freely and frankly it is always open for the petitioners to question the said action in an election petition as under Section 61(3) of the Act every dispute relating to, or in connection with, any election to a committee of the society shall be referred for a decision to the Tribunal having jurisdiction over the area. Therefore, it cannot be said that any right of the petitioners has been infringed in directing to conduct the elections.

It is also pertinent to note that the election to the various District Cooperative Central Banks (DCCBs) is scheduled to be held on 17.11.2005. If that be so, if elections are not conducted to 101 PACS the persons to be elected as president of the PACS will be deprived of their right to contest as member to the DCCBs. Therefore, I am of the opinion that there is urgent need to conduct elections to all the PACS. The preparation of the voter's list of the eligible voters to the DCCB is 12.11.2005 and the date of poll to the Managing Committee of the DCCB is 17.11.2005. Therefore, I am of the view that any postponing of the elections at this stage will hamper the conduct of elections to the Managing Committee of the DCCBs.

It is also pertinent to note that the Apex Court in the case of

C. SUBRAHMANYAM v. K. RAMANJANEYULU held that

non-compliance with the provisions of the Act being a ground for an election petition, such a writ petition is not maintainable.

A Division Bench of this Court in the case of **MJ. VEERAMANI v. GOVERNMENT OF AP** held that the process of election starts from the date of election notification and continues till the declaration of the result and no writ petition is maintainable to interrupt the election process.

A Full Bench of this Court in the case of **KALLA RAMAKRISHNA v. STATE ELECTION COMMISSION** held that in election matters, only one remedy is available, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to entertain writ petitions regarding improper rejection of nomination papers.

Though the impugned order of the Government is amenable to the writ jurisdiction I do not see any infirmity legal or otherwise in the impugned order. For the aforesaid reasons, the writ petitions are accordingly dismissed.

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V. ESWARAIAH, J

November 7, 2005

DSK